

Wildlife & Countryside Link is calling for comprehensive legislation to achieve better protection for marine wildlife and effective management of our seas

Wildlife and
Countryside



Marine Bill Bulletin

A Future for our Seas - Marine Nature Reserves: Lessons we must learn

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Wildlife and Countryside Link (Link) is calling for comprehensive legislation to achieve better protection for marine wildlife and effective management of our seas. Link believes that the Marine Bill offers a critical opportunity to provide for the designation of a representative network of Nationally Important Marine Sites, which must include a series of Highly Protected Marine Reserves. This Bulletin outlines why existing legislation is unable to deliver this, and calls on the Government to learn from past experience and to include new, robust provisions in the Marine Bill.

A note on terminology

In this bulletin, a number of terms are used for different types of protected sites in the sea. "Marine Protected Area (MPA)" is used as a general term that encompasses all of the designations discussed.

Prior to 1981 marine sites could only be protected in the UK on a voluntary basis. The first such voluntary marine conservation area (VMCA) was established around Lundy Island in the Bristol Channel in 1973 by the Lundy Field Society, and over 20 VMCAs were eventually established, focused mainly on exposed rocky reefs. Whilst VMCAs provide a degree of protection they lack a systematic approach to selection and management. They are also entirely reliant on the voluntary cooperation of users, promoted through education and informal codes of conduct, as there are no statutory powers to prevent damaging activities and developments in VMCAs.

Within UK territorial waters two pieces of legislation provide for the designation of Marine Protected Areas:-

- The 1981 Wildlife and Countryside Act (WCA), and similar provisions under an act for Northern Ireland, provide for the designation of Marine Nature Reserves (MNRs);

- The 1994 Conservation (Natural Habitats &c.) Regulations (and equivalent provisions for Northern Ireland) that implement the EC Habitats Directive provide for the designation of marine Special Areas of Conservation (SACs). The regulations also apply certain measures to marine Special Protection Areas (SPAs), under the EC Birds Directive. Collectively, marine SPAs and marine SACs are referred to as European Marine Sites (EMSs). (The Government has recently consulted on new legislation which will provide for the designation of marine SACs and SPAs beyond 12nm).

EMSs are only designated to protect a limited range of marine conservation features of European importance. Link also has concerns about the level of protection afforded to EMSs in practice.

At present the only legal basis on which marine conservation features of national importance can be protected is through MNR designation. However, the MNR provisions are extremely limited and have proved far too weak to protect nationally important marine sites.

Their limitations are arguably no accident. When the WCA was passed the UK government was strongly of the opinion that marine conservation could be achieved through sectoral policies, and that there was no need for specific legislation to protect habitats below the low water mark.

The MNR provisions under sections 36-37 and Schedule 12 of the WCA were eventually only included as an amendment, following a concerted campaign by the Marine Conservation Society and WWF. The Government reluctantly included these provisions only through fear of losing the entire bill, after what was described by a member of the House of Lords as "a saga of reluctance and feet dragging" It is thus not entirely surprising that they contain many weaknesses.

Section 36(1) of the WCA provides for the statutory nature conservation organisations (SNCOs) to

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designate MNRs out to 12 nautical miles mainly for the purposes of conserving marine flora and fauna, and providing opportunities for study and research. Section 37(2) provides for the SNCOs to impose protective byelaws to:-

- prohibit or restrict entry into and movement within the reserve;
- prevent interference with animals and plants in the reserve or damage to the seabed or other objects;
- prevent the depositing of rubbish;
- provide for the issuing of permits authorising entry into or permitting otherwise unlawful activities in the reserve or parts of it.

Whilst these powers appear robust, they are fundamentally flawed because none of the byelaws imposed by SNCOs to protect MNRs may interfere with the functions of any other relevant authorities or any right of any person (Section 36(6)). This means, for instance, that MNR byelaws cannot be imposed to restrict fishing, as this is the responsibility of the government fisheries agency. As such, the byelaw powers for protecting MNRs are, in fact, extremely weak.

The second critical weakness is related to the process by which decisions concerning MNR proposals are made through the Government's interpretation of Section 36(4) and Schedule 12. It is required that such proposals are advertised and brought to the attention of all potentially interested and affected parties, who are invited to submit expressions of support, neutrality or objection to the SNCO. In theory, the Secretary of State can approve an MNR order that has been objected to by one or more parties, provided that these objections have been heard, considered and reported. In reality, the Secretary of State requires the SNCO to overcome all significant objections, by persuasion or by modifying the proposal in order to appease the objectors. In effect, this requirement gives any party that fears that its interests may be adversely affected by the MNR proposal, such as fishermen, fish farmers, yachtsmen and divers, the power of veto over such proposals.

Despite these shortcomings, the SNCOs were keen to use the new MNR provisions as this represented their first opportunity to legally protect sub-tidal marine habitats. A total of ten sites were initially pursued of which only three were eventually designated (Box 2).

Box 2: MNRs pursued under the 1981 Wildlife and Countryside Act (and related provisions for Northern Ireland)

England: Lundy (designated 1986)

Isles of Scilly
Lindisfarne

Wales: Skomer (designated 1990)

Menai Strait
Bardsey Island

Scotland: St Abb's

Loch Sween

N. Ireland: Strangford Lough (designated 1995)

Rathlin Island

It was intended that further sites would subsequently be designated, but due to the slow and very limited progress with the "initial" sites no further MNRs were pursued. Seven of the initial MNR proposals failed because certain users maintained objections, in the face of which the Government refused to grant approval. Furthermore, during negotiations on the three MNRs that were designated it was necessary for the SNCOs to make major compromises on the proposed management restrictions in order to appease objectors - very few of the proposals to legally protect important habitats within the designated MNRs gained approval. For instance, all the byelaws proposed to protect habitats and species within the Skomer MNR had to be replaced with voluntary codes of conduct that were not legally binding on users, in order to gain consensus on the MNR proposal. Thus, even those sites which were successfully designated were conferred only limited and weak protection.

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The bottom-line is that if voluntary compliance by users is not forthcoming, the SNCOs have no powers to require such compliance to protect MNRs. Experiences from around the world indicate that a minority of users will continue to breach MPA restrictions unless there are laws that can be used to stop them, and that such rule-breaking is bound to undermine the fulfilment of marine nature conservation objectives. Whilst user participation, consensus building and voluntary compliance are important principles, it is clear that recourse to statutory enforcement of user restrictions must be provided for if nature conservation objectives are to be achieved for nationally important marine sites.

The operation and effectiveness of the WCA were reviewed in 1985 by the House of Commons Environment Committee. This report identified the MNR provisions as being particularly ineffective and urged the government to strengthen them by extending the SNCO byelaw powers, empowering the Secretary of State to over-ride the byelaw making powers of other authorities, particularly the fisheries authorities, and/or extending the SSSI provisions to cover marine sites. Though the Government response stated that something would be done to strengthen the MNR provisions "in due course", the reality was that the Government remained committed to the weak approach requiring consensus that the WCA provided.

The provisions were never strengthened nor were the requirements for consensus on MNR proposals relaxed. The Secretary of State's response to a House of Commons debate on MNRs in 1985 stated that the Government considered that the voluntary approach implicit in the MNR provisions had not been exhausted and that the introduction of compulsion would be counter-productive. It was concluded that the Government had no immediate plans to pursue further MNRs beyond the "initial" ten sites.

In the light of this announcement, along with the lack of progress in designating MNRs, the extreme flaws in the MNR provisions, and the emerging priority of designating EMSs, the SNCOs quietly shelved any

further MNR initiatives. As noted above, EMSs are only designated to protect a limited number of features, of European importance. Thus, it is clear that existing legislation cannot provide for the designation and protection of a network of nationally important marine sites.

Since the WCA was passed several reviews – notably the Review of Marine Nature Conservation – have identified the need for better integrated management of marine sectoral activities and improved measures for nature conservation, including MPAs. Link is calling for the Marine Bill to provide for the designation of a representative network of Nationally Important Marine Sites which must include a suite of Highly Protected Marine Reserves. The Bill must include robust measures for the designation and management of MPAs to the limits of the UK's marine jurisdiction, including powers to restrict activities in order to achieve nature conservation objectives. The Government must learn from past mistakes to secure the future for marine species and habitats.

Link is grateful to Dr Peter Jones for providing the text for this Bulletin (p.j.jones@ucl.ac.uk).

Further information:

- Link's marine campaign
http://www.wcl.org.uk/marine_campaign.htm
- Marine Bill Bulletin issue 4: A Future for our Seas - The Marine Bill and Marine Protected Areas:
http://www.wcl.org.uk/downloads/2005/Link_Marine_Bill_Bulletin-Issue4.pdf
- Marine Bill Bulletin issue 7: A Future for our Seas - The case for Highly Protected Marine Reserves:
http://www.wcl.org.uk/downloads/2006/Link_Marine_Bill_Bulletin-Issue7.pdf

For more information on Link's marine campaign, or to be added to the mailing list for future bulletins, please contact Annie Smith on 020 7820 8600 or annie.smith@wcl.org.uk.